**HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI**
**AND**
**HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY**

**Writ Petition No. 17321 of 2007**

**Between:**

Smt. S. Jaya Lakshmi

... Petitioner

**And**

The Greater Visakhapatnam Municipal Corporation,
Rep. by its Commissioner, Visakhpatnam.

... Respondent

**:: O R D E R ::**

Counsel for the petitioner : Shri Meherchand Noori

**August 14, 2007**

**Per G.S. Singhvi, CJ**

Having failed to persuade I Additional Junior Civil Judge, Visakhapatnam to injunct Greater Visakhapatnam Municipal Corporation, Visakhapatnam (for short, 'the Corporation') from removing the unauthorized construction made by her in the property bearing Door No. 39-22-12/1/2, Madhavadhara, the petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India and prayed for quashing order-cum-notice dated 17.07.2007 issued by City Planner of the Corporation under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act').

The petitioner claims to have purchased 110 square yards comprised in Survey No.19/7b (part) of Madhavadhara, Visakhapatnam from one Shri P. Appa Rao and his wife through

registered sale deed dated 25.06.2003. After about one year, she submitted application dated 29.05.2004 for sanction of the building plan. The same was rejected by the competent authority. Notwithstanding this, the petitioner started construction. Simultaneously, she filed O.S.No.1662 of 2004 in the Court of Principal Junior Civil Judge, Visakhapatnam along with an application for interim injunction. She succeeded in persuading the concerned court to pass an order of injunction against the demolition of construction and then continued the construction activity. On 06.07.2006, the competent authority of the Corporation issued notice under Section 636 of the Act and called upon the petitioner to remove the unauthorized construction. She challenged the same in O.S.No.1600 of 2006 filed in the Court of I Additional Junior Civil Judge, Visakhapatnam. She also filed I.A.No.1170 of 2006 for grant of temporary injunction. This time, the trial Court rejected her prayer for temporary injunction. She then filed Writ Petition No.16109 of 2006 with the complaint that notice under Section 636 of the Act has been issued without complying with the mandate of the procedure prescribed under Section 452 of the Act. The same was disposed of by the learned Single Judge on 1.8.2006 in the following terms:

> " Heard the learned counsel.
>
> This writ petition is filed for writ of mandamus declaring the action of the respondent in attempting to demolish the petitioner's structure bearing Door No. 39-12-12/1/2 in an extent of 110 sq. yards in Sy.No.19/7B Part of Madhavadhara, Visakhapatnam without issuing any notice under Section 452 of Hyderabad Municipal Corporations Act, without giving her an opportunity of being heard and without passing any final order and by just strait away giving a demolition notice under Section 636 of Hyderabad Municipal Corporations Act, as illegal, arbitrary and pass such other suitable orders.
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> The main grievance of the petitioner is that the impugned notice was issued straight away with a threat of demolition without

issuing show cause notice under Section 452 of Hyderabad Municipal Corporations Act, 1955.

In the facts and circumstances of the case, the respondent to treat this notice as show cause notice and the petitioner is permitted to file her objections in relation thereto, within one week from today and the respondent to consider the objections and pass appropriate orders as expeditiously as possible subsequent thereto and till then status-quo obtaining as on today to be maintained.

With the above observation, the writ petition is disposed of."

In furtherance of the aforementioned order, the petitioner submitted reply dated 21.08.2006. After considering the same, the City Planner passed the impugned order-cum-notice. He noted that the petitioner raised the construction after rejection of the building plan, that as per the master plan, the land is proposed to be used for construction of link road and a sum of Rs.26.25 lakhs has been deposited with Collector and ordered removal of the illegal/unauthorized construction. The relevant portions of the impugned order-cum-notice are reproduced below:

" As per the directions of the Hon'ble High Court, the respondent Commissioner, G.V.M.C. has to consider the objections and passed appropriate orders.

Accordingly the Commissioner has gone through a representation 3rd cited, and found that there is no ground for considering her request. The portion purchased by her is in the area covered by master plan for forming a road. The purchase itself is illegal. In the interest of the public the corporation has decided to form a link road to an extent of 40 x 160 = 700 sq. yards in S.No.19/7D of Madhavadhara (v) out of which the petitioner has occupied 110 sq. yards. She has applied for the approval of building plan which was rejected by the Corporation. Even inspite of this rejection of plan the writ petitioner has high handedly constructed the building. The corporation has taken necessary steps to demolish unauthorized construction. The writ petitioner approached the Hon'ble High Court and Hon'ble High Court have issued order and directed the Commissioner to

issue appropriate orders on the writ petitioner's representations.

The G.V.M.C. Visakhapatnam have passed a resolution for acquisition of 1,000 Sq. yards for formation of this link road. Accordingly, the Corporation has submitted a land acquisition proposals to the Collector, Visakhapatnam with request to acquire 700 Sq. Yards so that the corporation can form a link road. The corporation also deposited Rs.26.25 lakhs with the Collector, VSP. The Collector is taking steps to acquire the land.

The objections raised in her representation in R.O.C.No.10499/06 and other objections raised by her have no relevance with this matter and are all false and not correct. Hence the request of petitioner in the representation is not tenable and rejected and building owner Smt. S. Jayalakshmi is hereby directed under Section 636 of HMC Act 1955 to remove the unauthorized construction of building at Door No.39-26-67 within 3 days from the date of receipt of this notice failing which the said unauthorized construction will be removed departmentally and the costs thereon will be recovered as per the rules."

Shri Meharchand Noori relied on the judgments of this Court in **G. Kamala Kumari v. Municipal Corporation of Hyderabad**[1] and **Ved Electrical Stores v. Additional Commissioner, MCH, Secunderabad**[2] and argued that the pendency of civil suit should not be made a ground for declining relief to the petitioner. He further argued that the construction made by the petitioner cannot be termed as illegal or unauthorized because in terms of the policy contained in G.O.Ms.No.423/1997 dated 31.07.1997, there is no necessity to get the building plan sanctioned. Shri Noori emphasized that the petitioner had informed the officers of the Corporation about her intention to construct the building, but they are determined to demolish the construction already made on the pretext that the land will be required for laying road. He submitted that if the Corporation or the State Government requires the land for laying road, then they are free to

acquire the same by following the procedure under the Land Acquisition Act, 1894.

We have given serious thought to the submissions of the learned counsel, but have not felt persuaded to entertain the writ petition.

In our opinion, the petitioner is not entitled to relief under Article 226 of the Constitution of India because she has not approached the Court with clean hands. As per her own assertion, the petitioner has filed two civil suits in the Court of Principal Junior Civil Judge and I Additional Junior Civil Judge, Visakhapatnam respectively and the same are pending. In the first suit, an order of injunction was passed by concerned Court, but a similar application made in the second case was dismissed. The averments contained in the plaints of the two suits and the orders passed on the applications for interim relief have direct bearing on the petitioner's contention that the order-cum-notice impugned in the writ petition is contrary to law. However, with a view to keep the Court in dark about the nature of the suits and the interim orders passed in the two cases, the petitioner has deliberately omitted to place on record copies of the plaints and the orders of injunction. Application dated 29.05.2004 made by the petitioner for approval of the building plan, order passed thereon and reply dated 21.08.2006 submitted by her in furtherance of order dated 01.08.2006 passed in Writ Petition No.16109 of 2006 also have direct bearing on the petitioner's challenge to the rejection of her objections, but she has intentionally refrained from placing on record these documents. It is, therefore, reasonable to draw an inference that the petitioner has tried to persuade the Court to quash the impugned order-cum-notice and restrain the Corporation from taking action against the illegal construction without considering her plea in a correct perspective. To put it differently, the petitioner is guilty of

contumacious conduct and, therefore, she is not entitled to relief under Article 226 of the Constitution of India, which empowers the High Court to issue appropriate direction, order or writ in the interest of justice.

For many centuries, the Indian society had cherished two basic values of life, namely, 'Satya' and 'Ahimsa'. One of these values i.e., 'Satya' constituted an integral part of the judicial system at various levels in our country. In pre-independence era, the people used to feel proud to tell truth in the Court proceedings irrespective of the consequences. However, post-independence period has seen a dramatic devaluation of the ethics. The materialism has over-shadowed the old ethos and quest for personal gain is so immense that the people do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in Court proceedings. In a substantial number of cases, the litigants resort to falsehood. A new creed of litigants has developed in the last 40 years, who do not have any respect for truth. They can go to any length to make false statements, misleading statements and suppress facts and documents with a view to persuade the Court to pass favourable orders. In order to meet this challenge, the Courts have evolved and will continue to evolve new mechanism to show doors to the litigants who do not come with clean hands. One of the rules laid down by the Courts is that a litigant who touches the pure fountain of justice with tainted hands is not entitled to hearing on the merits of the case.

In **Hari Narain v. Badri Das**[3], the Supreme Court upheld the objection raised on behalf of the respondents that the appellant was guilty of misstating the facts and revoked the leave by making the following observations:

> "It is of utmost importance that in making material statements and setting forth grounds in applications for

special leave made under Art. 136 of the Constitution, care must be taken not to make any statements, which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

In **Welcome Hotel and others v. State of Andhra Pradesh and others etc.**[4]**,** the Supreme Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

In **G.Narayanaswamy Reddy and others v. Governor of Karnataka and another,**[5] the Supreme Court declined relief to the appellant, who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act on account of interim stay order passed in a writ petition. While dismissing the special leave petition, the Court observed:

"Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter-affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On

> this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Article.136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

In **S.P.Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others**[6], the Supreme Court held that where a preliminary decree was obtained by playing fraud on the Court in-as-much as a vital document was withheld in order to gain advantage on the other side, such party deserves to the thrown out at any stage of the litigation.

In **Nand Lal and others v. State of Jammu and Kashmir and another**[7], a learned Judge of Jammu and Kashmir High Court held that if a party does not disclose all the facts correctly and candidly, he is not entitled to be heard on the merits of the case. Some of the observations made by the learned Single Judge are reproduced below:

> " Where the petitioners under Art. 226 have not stated the relevant facts in the petition or in the affidavit in support of their petition, this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits. And even if the petitioners have a good case on merits, the Court will be entitled to decline to go into the merits and dismiss their petition, because the conduct of the petitioners has been such as to mislead the Court."

Reference also deserves to be made to some of the English decisions on this subject. In **Rex v. Kensington**[8], Cozens Hardy M.R. made the following observations on the conduct of a party in an

ex-parte application in the following words:

> "On an ex-parte application uberrima fides is required, and unless that can be established if there is anything like deception practiced on the Court, the Court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done."

Lord Scrutton L.J., said:

> "It has for many years the rule of the Court and one which it is of the greatest importance to maintain, that when any applicant comes to the Court to obtain relief on an ex-parte statement, he should make a full and fair disclosure of all the material facts, facts not law….
> …….The applicant must state fully and fairly the facts and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement".

In **R v. Churchwardens of All Saints Wigan**[9], Lord Haterlay observed:

> "Upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant of it- matters connected with delay or possibly with the conduct of the parties."

In **Rex v. Garland**[10]**,** it was held:

> "Where a process is ex debito justitiae, the Court would refuse to exercise its discretion in favour of the applicant where the application is found to be wanting in bona fides."

The proposition which can be culled out from the above noted judgments is that the High Court will not come to the aid of a person, who is guilty of concealing/suppressing material facts or making a false or misleading statement.

We are further of the view that the action taken by the

Corporation requiring the petitioner to remove the illegal/ unauthorized construction does not suffer from any legal infirmity. The facts of the case show that notice dated 06.07.2006 issued by the Corporation was challenged by the petitioner in Writ Petition No.16109 of 2006. While disposing of that petition, the learned Single Judge directed that the notice issued under Section 636 be treated as a show cause notice and opportunity be given to the petitioner to file objections with a further direction to the competent authority to pass appropriate order in accordance with law. In compliance of that order, the City Planner considered the objections filed by the petitioner and declined to accept the same because the disputed construction was raised after rejection of the application made by her for sanction of the building plan. At no stage, the petitioner had claimed that she was not required to obtain sanction of the building plan. Therefore, the argument raised by Shri Noori on that score cannot be entertained.

The judgment of the Division Bench in **Ved Electrical Stores v. Additional Commissioner, MCH, Secunderabad** (supra), on which reliance has been placed by Shri Noori, is of no help to the cause of the petitioner. In that case, the petitioner had challenged notice issued under Section 636 of the Act on the premise that the same was not preceded by notice under Section 452. The counsel appearing for the Corporation objected to the entertaining of writ petition on the ground that suit for similar relief is pending in the civil Court. While overruling the objection, the Division Bench observed that the notice issued under Section 636 of the Act was not subject matter of suit and held that the action for demolition cannot be taken without issuing notice under Section 452 of the Act. In the case before us, earlier notice issued under Section 636 of the Act will, in view of the order passed in Writ Petition No.16109 of 2006, have to be treated as a

notice issued under Section 452. Therefore, on facts, the judgment of the Division Bench is distinguishable.

In **G. Kamala Kumari v. Municipal Corporation of Hyderabad** (supra), a learned Single Judge of this Court (the order runs into one paragraph) held that the order of demolition cannot be passed without giving notice and opportunity of hearing. There is nothing in the judgment which can support the petitioner's plea for invalidation of order-cum-notice dated 17.07.2007 because the same has been passed after considering the objections filed by the petitioner.

In the result, the writ petition is dismissed. However, liberty is given to the petitioner to pursue her remedy in the civil court.

As a sequel to dismissal of the writ petition, W.P.M.P.No.22156 of 2007 filed by the petitioner for interim relief is also dismissed.

**G.S. SINGHVI, CJ**

**C.V. NAGARJUNA REDDY, J**

August 14, 2007

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[1] AIR 1990 AP 159

[2] 2003 (1) ALD 721 (DB)

[3] AIR 1963 SC 1558

[4] AIR 1983 SC 1015

[5] AIR 1991 SC 1726

[6] JT 1993 (6) SC 331

[7] AIR 1960 J & K 19

[8] 1917 (1) KB 486

[9] (1876) 1 A.C. 611

[10] (1870) 39 L.R. Q.B. 269